

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
CC Docket 94-54

In the Matter of

Interconnection and Resale
Obligations Pertaining to
Commercial Mobile Radio Services

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REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 785-0081

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The Cellular Telecommunications Industry Association ("CTIA"),¹ by its attorneys, submits its Reply Comments in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The comments filed in response to the Commission's Notice demonstrate the lack of a concrete, empirical record which would warrant mandating CMRS carrier to carrier roaming relationships. An automatic roaming requirement would represent a significant and unnecessary departure from Commission's long-standing policy to provide CMRS carriers with maximum flexibility by permitting

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular, broadband personal communications service ("PCS"), enhanced specialized mobile radio, and mobile satellite service providers. CTIA represents more broadband PCS carriers, and more cellular carriers, than any other trade association.

² Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket 94-54, FCC 96-284 (released August 15, 1996) ("Notice").

market forces to shape the development of CMRS.³ CTIA continues to believe that Commission imposition of an automatic roaming requirement is entirely premature.⁴

Contrary to commenter assertions, the Commission would need to address many complex issues if it imposed an automatic roaming requirement among CMRS carriers. Current roaming agreements are the product of a detailed negotiation process. The numerous variables considered by each carrier during the negotiations would be difficult to accommodate within a regulatory structure. In other words, Commission attempts to define the rights of similarly situated carriers would require intrusive scrutiny and would significantly impair needed carrier flexibility.⁵

CTIA also challenges the notion raised in the comments that cellular technology should be the default standard for PCS roaming. For the Commission to agree to this proposition it

³ See Notice at ¶ 26-27. The Commission has also noted that automatic roaming may be at odds with Congress' intent in passing the Telecommunications Act of 1996. Notice at ¶ 27.

⁴ CTIA has consistently demonstrated throughout this proceeding that CMRS carriers lack persistent and sustained market power deserving of a regulatory imposition of a duty to deal. See, e.g., CTIA comments at 5-7 & n.14. Concepts of regulatory parity between cellular and PCS carriers also dictate that the duty should not be imposed solely upon cellular carriers.

⁵ As the Commission noted, an "[automatic roaming] rule would need to recognize that not all carriers are similarly situated." Notice at ¶ 22. Given the disparate licensing schemes adopted by the Commission for cellular MSAs and RSAs, and the broadband PCS bands, defining those carriers that are similarly situated for the purpose of automatic roaming will be a burdensome task requiring many arbitrary assumptions.

would in essence be imposing automatic roaming requirements solely on cellular providers. Given that there is no record evidence of pervasive market failure, that many PCS carriers have announced their intent to provide nationwide roaming within the PCS bands, and that roaming represents a strategic business decision on the part of CMRS carriers, the Commission should refrain from such draconian measures.

II. AN AUTOMATIC ROAMING REQUIREMENT WOULD NECESSARILY DEMAND DETAILED RULES SIMILAR TO THE SECTION 251 INTERCONNECTION REQUIREMENTS, AND MAY HAVE THE UNINTENDED EFFECT OF CREATING A DEFAULT CELLULAR BASED STANDARD FOR PCS ROAMING.

A. Automatic Roaming is a Market Driven Service that has Developed without Regulatory Guidelines and Standards.

The Alliance of Independent Wireless Operators supports the adoption of an automatic roaming requirement believing that it would only entail a minimal regulatory burden.⁶ They claim that any regulatory burden is offset by the benefits that may be realized.⁷

Contrary to these claims, the burdens to the Commission and to CMRS carriers from an automatic roaming requirement are significant. Moreover, the requirements would be incompatible

⁶ Alliance of Independent Wireless Operators comments at 14 ("Independent Operators").

⁷ While the Independent Operators assert that the burdens of automatic roaming upon CMRS carriers are offset by relief from the Commission's manual roaming requirements, they fail to recognize the extent to which the burdens of these two services differ. The burdens of manual roaming are realized only as to one individual roamer on the serving carrier's network. As demonstrated below, the burdens of automatic roaming are based upon the imposition of an ongoing commercial relationship between two carriers and their entire subscribership. See infra note 10.

with the Commission's "general policy of allowing market forces, rather than regulation, to shape the development of wireless services."⁸

CMRS carriers voluntarily negotiate automatic roaming arrangements to enhance the competitive services they provide to their subscribers. Roaming agreements are unique to the individual carriers, and have never been mandated by the Commission. They are the product of the parties' close scrutiny of complex factors relating to both carriers' networks. Such factors include the geographic proximity of the two carriers, the anticipated volume of traffic exchanged between them, the length of the agreement, and the technical infrastructure of the roaming partner -- particularly its efforts to protect against fraud.⁹ In addition, automatic roaming agreements establish the parameters under which carriers will divide revenues, apportion fraud liability, and exchange and update subscriber data. As demonstrated in our Comments, automatic roaming carries costs for both parties.¹⁰ Wireless carriers, therefore, need the

⁸ Notice at ¶ 27.

⁹ Many roaming agreements permit carriers to suspend the agreement if fraudulent or unwarranted use has reached unacceptable levels. A Commission mandate to deal would necessarily restrain a carrier's ability to suspend an agreement, thereby threatening security protections against fraudulent use.

¹⁰ Some of the expenses associated with automatic roaming include: (1) initially loading the user data of the roaming partner, (2) managing the information once loaded, (3) updating the data on a regular basis, and (4) costs associated with financial settlements with the roaming partner. CTIA comments at 16-19; See also Vanguard comments at 6-7 ("[M]andatory automatic roaming requirements

flexibility to negotiate terms consistent with their unique characteristics and their unique business strategies.¹¹ Moreover, not all automatic roaming agreements are compensatory. In some circumstances market forces require carriers to provide their customers with "home rated" service provided through a roaming agreement with a neighboring carrier.

Contrary to commenter claims, simply decreeing that cellular carriers must offer automatic roaming agreements is not a viable means of regulating automatic roaming. The Commission recognized as much when it stated in the Notice that an automatic roaming rule would need to be flexible and, "would need to recognize that not all carriers are similarly situated."¹² The Independent Operators propose an automatic roaming rule that states, "[i]f a carrier requests an automatic roaming agreement, one must be promptly given."¹³ This claim not only proposes an ineffective solution, but fails to recognize that in the Notice, the Commission specifically stated that "such a rule need not require carriers to offer roaming agreements to all other carriers on the

would impose significant network and administrative costs on CMRS carriers. . . Indeed, the cost of financial and personnel resources is difficult to fully comprehend.").

¹¹ Recently, Commissioner Chong acknowledged the successful workings of the market. See "Manual Roaming Requirements Extended to Selected SMR Providers," Land Mobile Radio News, June 28, 1996 ("[A]ll of the advances in cellular roaming occurred without the government requiring automated roaming agreements. Market forces drove this to occur.").

¹² Notice at ¶ 22.

¹³ Independent Operators comments at 18.

same terms and conditions, or even to offer roaming service to any carrier at all."¹⁴

The existence of numerous variables renders the proposition of creating a working regulatory scheme most challenging, not unlike the Commission's proceeding implementing incumbent LEC interconnection.¹⁵ The Commission would have to create a set of detailed regulations that benchmark similarly situated carriers, as roaming agreements are tailored for individual carrier assessments. Generic definitions of similarly situated carriers would fail to adequately balance the diverse factors that currently comprise a roaming agreement.¹⁶ Eventually, it would involve the Commission closely studying automatic roaming agreements, developing complex rules, overseeing their implementation, and being prepared to arbitrate disputes among carriers.¹⁷

¹⁴ Notice at ¶ 22.

¹⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185 (released August 8, 1996) ("First Report and Order").

¹⁶ The Integrated Communications Group ("ICG") agrees that automatic roaming agreements would only have to be made available to similarly situated providers, but fails to consider the many factors that would go into making such a determination. ICG comments at 1.

¹⁷ Consider for example the amount of anticipated traffic that will be realized from the other carrier. This factor is inherently unique for each carrier. For instance, every carrier has a different number of subscribers some of whom may be more likely than others to roam depending upon the demographics of the region. Some carriers are geographically more proximate and thereby offer more potential users, while other carriers may present the

In fact, it has been proposed that automatic roaming be regulated as interconnection under Sections 251 and 252.¹⁸ The Commission, however, rejected requests to impose onerous direct interconnection requirements on CMRS carriers in the First Report and Order.¹⁹ The record in this proceeding simply fails to demonstrate the need for a rate regulation scheme for automatic roaming or the need to reconsider the conclusions reached in the First Report and Order.²⁰

B. Implementing an Automatic Roaming Requirement as a Substitute for a National PCS Roaming Standard is Inconsistent with the Commission's Refusal to Set PCS Standards.

Several PCS carriers contend that an automatic roaming requirement should be imposed upon cellular carriers to remedy the current lack of a nationwide technical PCS standard. They

potential for future roaming traffic. Each factor relating to the anticipated volume of traffic is weighted differently by all carriers in their agreements. Static regulations attempting to mimic these conditions are sure to encroach upon the efficiency of the market forces, especially in a market as dynamic as the wireless industry.

¹⁸ Independent Operators comments at 11-12.

¹⁹ "[B]ecause CMRS providers do not fall within the definition of [an incumbent] LEC under Section 251(h)(1), they are not subject to the duties and obligations imposed on incumbent LECs under section 251(c)," including the duty to provide for direct interconnection. First Report and Order at ¶ 1006 (citation omitted).

²⁰ Soutwestern Bell Mobile Systems ("SBMS") appropriately notes that to impose automatic roaming on cellular carriers is a burden "that did not exist when the acquisition of markets was made. In contrast, PCS providers were well aware of the 'ground rules' when they purchased their PCS licenses. Mandated automatic roaming was never one of those 'rules'." SBMS comments at 16.

also view automatic roaming as a means of achieving an increased service area while rolling-out their PCS facilities.²¹ The Commission, however, should resist these requests as they may unintentionally skew the creation of a competitive CMRS marketplace by introducing non-market driven exogenous factors that will affect carriers' selection of CMRS technologies.²²

Consistent with its reliance upon CMRS market forces, the Commission has resisted any determination as to which of the competing technologies PCS carriers must deploy in their network architecture.²³ The imposition of an automatic roaming requirement at this juncture, with the possible creation of a default cellular roaming standard, conflicts with these ideals.²⁴

²¹ See ICG comments at 2 (PCS carriers need mandatory automatic roaming within their BTA licensed area during the gradual build out of their networks to compete with established cellular companies); Western Wireless comments at 12 ("The lack of a nationwide standard for PCS exacerbate the problem . . . Until enough systems are up and running, a transitional roaming requirement ensuring PCS-to-cellular roaming is needed for PCS service to be available at all." (citation omitted)).

²² By asking the Commission to mandate automatic roaming between cellular and PCS companies, PCS carriers apparently want the Commission to insure them against the market risks associated with the competing PCS technologies -- something the Commission should refrain from doing.

²³ Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket 90-314, 8 F.C.C.R. 7700 (1993), at ¶ 137 (the adoption of a rigid technical framework while PCS is in its developmental phase "may stifle the introduction of important new technology").

²⁴ When referring to the possibility of creating regulatory standards, Chairman Hundt recognized the flawed reasoning underlying the belief that government policy could substitute for the efficient operation of the marketplace, stating "problems are typically solved by industry standard setting instead of government standards. There's no

Whether PCS carriers choose to adopt cellular technology as a default standard for PCS roaming is something that the market, and not the Commission, should determine.²⁵ Given the lack of record evidence justifying mandated automatic roaming,²⁶ the Commission should refrain from such a requirement.²⁷

government standard for . . . PCS." Chairman Reed Hundt, Address at the International Radio & Television Society (Oct. 18, 1996).

- ²⁵ Analysts already foresee that many dual-mode wireless telephones will be built with one PCS standard, and with the cellular analog standard. See M. J. Richter, "PCS Roaming in the US," PCS Focus 96/97 at 27. The market, and not the Commission should resolve whether this is the most efficient outcome.
- ²⁶ The Commission recognized in the Notice that, "there is no specific evidence in the record of unreasonable discrimination against PCS licensees concerning the provision of roaming." Notice at ¶ 20. The anecdotal examples raised by some of the parties fails to rise to a level justifying industry-wide automatic roaming regulations by the Commission.
- ²⁷ Western Wireless raised an additional concern that a particular cellular carrier, with which it was forming a cellular automatic roaming agreement, refused to allow Western Wireless to issue dual-mode phones to its PCS customers for use on the cellular carrier's network. Western Wireless comments at 3-4. CTIA has stated throughout this proceeding, and continues to support here, the proper use of the Section 208 complaint process (47 U.S.C. § 208) as a means of protecting consumers from statutorily unreasonable practices. See CTIA comments at 7-8. If a pattern of unreasonable practices develops, the FCC retains the authority to address the market failure through a rulemaking proceeding.

III. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission refrain from adopting an automatic roaming requirement for CMRS providers.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION**



Michael F. Altschul
Vice President, General Counsel

Randall S. Coleman
Vice President for
Regulatory Policy and Law

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